

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
ADDING CHAPTER 5.90 OF THE HUNTINGTON BEACH MUNICIPAL  
CODE RELATING TO FIREWORKS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Chapter 5.90 of the Huntington Beach Municipal Code is hereby added to read as follows:

**Chapter 5.90  
FIREWORKS**

**Sections:**

- 5.90.010 Definitions
- 5.90.020 General Prohibition Against Possession, Sale or Use of Fireworks
- 5.90.030 Exception – Safe and Sane Fireworks
- 5.90.040 Exception – Public Displays
- 5.90.050 Exception – Theatrical Performances
- 5.90.060 Safe and Sane Firework Sales – Permit Required
- 5.90.070 Safe and Sane Fireworks – Grant of Approval of Permit by City Clerk
- 5.90.080 Safe and Sane Fireworks – Determination of “Qualified Applicant”
- 5.90.090 Safe and Sane Fireworks – Application by “Qualified Applicant”
- 5.90.100 Safe and Sane Fireworks – Prerequisite for Issuance of Permit
- 5.90.110 Safe and Sane Fireworks – Regulatory Fee for Permit
- 5.90.120 Safe and Sane Fireworks – Operation of Fireworks Stand
- 5.90.130 Safe and Sane Fireworks – Temporary Fireworks Stand
- 5.90.140 Safe and Sane Fireworks – Revocation of Permit
- 5.90.150 Safe and Sane Fireworks – Limitation on Places and Hours of Discharge
- 5.90.160 Safe and Sane Fireworks – Supervision of Minors
- 5.90.170 Safe and Sane Fireworks – Seizure of Fireworks
- 5.90.180 Fireworks Wholesaler Public Education Plan
- 5.90.190 Concurrent Authorities
- 5.90.200 Expiration of Ordinance

**Section 590.010 Definitions.**

The following words and phrases, as used in this Chapter, are defined as follows:

- a. “Dangerous Fireworks” shall mean “Dangerous Fireworks” in Health and Safety Code Sections 12505 and 12561 and the relevant sections of Title 19, Code of Regulations, Subchapter 6 which are hereby incorporated by reference.

- b. "Fireworks Stand" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of "Safe and Sane Fireworks."
- c. "Fireworks Wholesaler" means any person, other than an importer, exporter or manufacturer, who purchases fireworks from a manufacturer, importer or exporter for resale to a retailer or any other person for resale – or – any person who sells fireworks to other wholesalers or retailers for resale.
- d. "Nonprofit organization" shall mean any nonprofit association, charity or corporation organized primarily for veteran, patriotic, welfare, civic betterment, religious, athletic or charitable purposes pursuant to the Internal Revenue Code or California Revenue and Taxation Code, or a group which is an integral part of a recognized national organization having such tax-exempt status or an organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district that serves, in whole or in part, the residents of the City or public and/or private community college, college and/or university which is located within the boundaries of the City.
- e. "Person" means a natural person or a legal entity that is also an owner, tenant, lessee and/or other person with any right to possession or control the property where a violation of this code occurred.
- f. "Principal and permanent meeting place" means a place that is owned, rented, or leased by the organization, or a meeting room, hall, or facility where the organization has a right to demand exclusive occupancy at specific times and dates for regularly scheduled meetings or activities.
- g. "Public display of fireworks" shall mean an entertainment feature where the public is admitted or permitted to view the display or discharge of fireworks, including but not limited to, those defined above.
- h. "Preferred Applicant" shall mean the "Fourth of July Executive Board" and/or its successor in interest. The "Preferred Applicant" is exempt from the requirements of a "Qualified Applicant" as defined in this section.
- i. "Qualified Applicants" shall mean any group or organization which has met all of the following criteria for a continuous period of not less than one full year preceding submittal of an application for a permit to sell required by this Chapter and which continues to meet the criteria for the duration of any permit to sell issued by the City of Huntington Beach pursuant to this Chapter.
  - i. The organization shall be a nonprofit organization pursuant to purposes pursuant to the Internal Revenue Code or California Revenue and Taxation Code; or a group which is an integral part of a recognized national organization having such tax-exempt status or an organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district that serves, in whole or in part,

the residents of Huntington Beach or public and/or private community college, college and/or university which is located within the boundaries of the City of Huntington Beach. Only one application per school will be allowed. If an organization is affiliated with a recognized educational institution as defined in this Section, but maintains a separate tax exempt status with the Internal Revenue Service or the California Franchise Tax Board, said nonprofit organization shall be allowed a separate application.

- ii. The organization shall be organized primarily for veterans, patriotic, welfare, civic betterment, religious, athletic, educational, youth development or charitable purposes;
  - iii. The organization must have its principal and permanent meeting place within the City;
  - iv. The organization must be one which provides direct and regular community services and benefits to the residents of the City;
  - v. Has a minimum bona fide membership of at least twenty (20) members who either reside in the City, are employed in the City, or are owners or operators of a business or other establishment located in the City;
  - vi. Has not been found by any court of competent jurisdiction or City administrative hearing officer to be in violation of any civil or criminal local, state or federal law relating to fireworks within twenty-four calendar months prior to the organization's submittal of an application for a permit to sell;
  - vii. Has not had a permit to sell revoked within twenty-four months prior to the organization's submittal of an application for a permit to sell.
- j. "Safe and Sane Fireworks" (a.k.a. "state-approved fireworks") shall mean "Safe and Sane Fireworks" as set forth in Health and Safety Code Sections 12529 and 12562 and the relevant sections of Title 19, Code of Regulations, Subchapter 6 which are hereby incorporated by reference.

#### **Section 5.90.020 General Prohibition Against Possession, Sale or Use of Fireworks.**

Except as otherwise provided in this Chapter, no person shall possess, sell, use, display, or discharge any "Dangerous Fireworks" including, but not limited to, any rocket, firecracker, roman candle, squib, torpedo, wire core sparkler, wooden core sparkler, black cartridge, aerial shell or other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, or any altered "Safe and Sane Fireworks" within the City of Huntington Beach.

**Section 5.90.030 Exception – Safe and Sane Fireworks.**

It shall be unlawful to possess, sell, display or discharge within the City, those fireworks that are defined and classified as "Safe and Sane Fireworks" (a.k.a. "state-approved fireworks") in the California State Fireworks Law (Sections 12500, et seq., of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6) at any time except as provided in this Chapter.

**Section 5.90.040 Exception – Public Displays.**

Notwithstanding any other provisions of this article, the Fire Chief or his/her designee at his discretion may grant permits for public displays of fireworks under his supervision.

**Section 5.90.050 Exception – Theatrical Performances.**

Notwithstanding any other provisions of this article, the Fire Chief or his/her designee at his discretion may grant permits for the use of pyrotechnic devices for the purpose of theatrical performances under his supervision.

**Section 5.90.060 Safe and Sane Fireworks Sales – Permits Required.**

It shall be unlawful for any person to sell "Safe and Sane Fireworks" within the City without having first applied for and received all required permits and licenses therefore, from the City.

**Section 5.90.070 Safe and Sane Fireworks – Grant of Approval of Permit by City Clerk.**

- a. Effective March 1, 2012, the City Clerk shall issue up to ten permits to the "Preferred Applicant" for the sale of fireworks in the City of Huntington Beach. In the event that the "Preferred Applicant" does not apply for ten permits, the City Clerk shall issue permits to "Qualified Applicants" via lottery, not to exceed a total of ten permits to sell fireworks in the City of Huntington Beach city-wide.
- b. Effective March 1, 2013, the City Clerk shall issue up to ten permits to the "Preferred Applicant" for the sale of fireworks in the City of Huntington Beach. In the event that the "Preferred Applicant" does not apply for ten permits, the City Clerk shall issue permits to "Qualified Applicants via lottery, not to exceed a total of twenty permits to sell fireworks in the City of Huntington Beach city-wide.

**Section 5.90.080 Safe and Sane Fireworks – Determination of "Qualified Applicant".**

The City Clerk shall use the following factors in determining if applicants are qualified to participate in the lottery:

- a. Only organizations prequalified by the City Clerk pursuant to Section 5.90.010 shall be considered;

- b. The contributions the organization has made or is proposing to make to the City of Huntington Beach's civic pride or betterment, youth activities and programs, care or assistance to the elderly, infirmed or disabled, assistance to or support of the business community, charitable efforts and other community contributions deemed beneficial by the City Council;
- c. The location and suitability of the premises where the organization proposes to operate.

**Section 5.90.090 Safe and Sane Fireworks – Application by “Qualified Applicant”.**

- a. No nonprofit organization shall submit more than one (1) application for a permit to sell "Safe and Sane Fireworks" within the City. Except for the "Preferred Applicant", no nonprofit organization shall be permitted more than once location. If more than one (1) application is submitted on behalf of any nonprofit organization, including an affiliated organization, all such requests shall be voidable at the discretion of the City Clerk. If a question arises as to whether organizations and/or groups are affiliated, the City Manager shall have ultimate authority to decide said question. Any attempt to transfer an application shall void any and all applications filed by or on behalf of the transferor/nonprofit organization and the transferee/nonprofit organization. All applications for permits to sell "Safe and Sane Fireworks" shall be in writing to the City Clerk on forms supplied by the City. Applications may be filed beginning March 1 of each year up to and including March 31 of the same year, at which time the filing period for that year will be closed. A deposit in an amount equal to the permit fee established by resolution of the City Council shall be submitted with the application. The deposit shall be refunded in the event that the nonprofit organization is not permitted by the City Clerk.
- b. The application shall be accompanied by all documentation required by the City Clerk and shall include, but not be limited to, the following:
  - i. Assurance that, if the permit is issued to the applicant, the applicant shall, at the time of receipt of such of permit, deliver to the City a certificate evidencing policies of insurance as required by City resolution.
  - ii. Proof that the applicant nonprofit organization has met the definition and requirements set forth in this Chapter.
  - iii. Documentation demonstrating tax-exempt status.
  - iv. A written statement describing the benefits the organization provides the community which will be used by the City Council to make the determination on whether to grant a permit.
- c. The applications shall be signed by an authorized officer or director of the nonprofit organization who shall warrant to the City of Huntington Beach the veracity of all statements contained therein. If any material statement in the application is determined by

the City Clerk to be false or misleading, the City Clerk may forthwith revoke the permit issued by the City Clerk.

- d. The City Clerk shall review all applications for sufficiency and completeness within ten days of filing and promptly notify applicant nonprofit organizations of any defects, disqualifying factors or omissions. All applications and required accompanying documentation shall be in final form and shall be filed with the City Clerk by 5:00 p.m. on March 31 of each year. The City Clerk shall not be required to accept additional documentation after March 31, but may request information clarifying or additionally explaining the applicant's proposal.
- e. All nonprofit organizations meeting the requirements for a permit under this Section shall be pre-qualified by the City Clerk provided they comply with all other portions of the Municipal Code and provisions of this ordinance.

**Section 5.90.100 Safe and Sane Fireworks – Prerequisite for Issuance of Permit.**

- a. If a nonprofit organization is selected to be granted a permit to sell fireworks pursuant to this Chapter, prior to issuance of said permit, and in addition to those other requirements set forth in this Chapter or on the permit application; in order for a permit to be issued, a "Qualified" nonprofit organization shall demonstrate compliance with all of the following:
  - i. On a form provided by the City, set forth the proposed location of the fireworks stand; the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored at such location; and written permission from the owner of record and/or lessor and/or management company of the property upon which said fireworks stand is proposed to be located;
  - ii. The applicants status as a nonprofit, charitable, religious or elementary corporation or association;
  - iii. When the applicant was organized and established;
  - iv. The names and addresses of the officers, if any, of the applicant;
  - v. The location where the applicant will sell fireworks including a plot plan;
  - vi. The name, address, and state fire marshal's license number of any wholesaler or distributor from whom the retailer proposes to purchase for resale;
  - vii. The applicant's state board of equalization sales tax permit number;
  - viii. The manner, method and times, when and how the applicant proposes to sell safe and sane fireworks;

- ix. Such other information as the City may require to process an application;
  - x. A copy of the requisite retail sales permit issued by the Office of the California State Fire Marshal;
  - xi. Evidence of a temporary sales tax permit from the California State Board of Equalization.
- b. Throughout the term of a permit issued pursuant to this Chapter, each permittee shall pay for and maintain in full force and effect policies of insurance in a form and amount and with coverage types required by the City.
  - c. The continued validity of any City permit issued pursuant to this Chapter shall be subject to the requirement that at least one or more representatives of each nonprofit organization shall attend a "Safe and Sane Fireworks" stand operator safety seminar conducted by the City and the permitted fireworks wholesaler that is supplying the "Safe and Sane Fireworks" to the nonprofit organization. The failure of a nonprofit organization to have a responsible individual(s) attend the safety seminar may result in the revocation of its permit to sell "Safe and Sane Fireworks."

**Section 5.90.110 Safe and Sane Fireworks – Operation of Fireworks Stand.**

- a. No person shall knowingly sell fireworks to any person under the age of eighteen (18). Proof that the fireworks stand operator/organization demanded, was shown and acted in reliance upon bona fide evidence of age and identity in any sale of fireworks forbidden by this Chapter shall be a defense for any proceedings for suspension or revocation of its "safe and sane fireworks" permit or any criminal proceedings for violations of this Chapter. For purposes of this section, bona fide evidence of age and identity of purchaser is a document issued by a federal, state, county or municipal government which contains a photograph of the purchaser including, but not limited to, a valid California Driver's License or Identification Card issued to a member of the Armed Forces.
- b. It shall be illegal to sell fireworks except between 12:00 noon and 10:00 p.m. on July 1st, 2nd, and 3<sup>rd</sup> and between 10:00 am to 8:00 pm on July 4<sup>th</sup>.
- c. Except for the "Preferred Applicant", no person other than the individuals who are members of the permittee and/or joint venture nonprofit organization(s) or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of "Safe and Sane fireworks" at such stand.
- d. No person under the age of eighteen (18) shall sell or participate in the sale of "Safe and Sane Fireworks" within such stand.
- e. No person shall be paid any consideration by the permittee nonprofit organization(s) or any wholesaler/distributor of "Safe and Sane Fireworks" for selling or otherwise participating in the sale of "Safe and Sane Fireworks" at such stand; provided, however,

that compensation may be paid for licensed security personnel during sale or non-sale hours and to the party authorizing the location of the stand on its property. The Fire Chief or his/her designee may revoke the fireworks storage permit and/or local business permit of any fireworks wholesaler/distributor violating the terms of this Section.

- f. All fireworks shall be retained at the approved location. In no event shall unsold fireworks be removed from the approved location to any other place without written approval of the Fire Chief or his/her designee.

**Section 5.90.120 Safe and Sane Fireworks – Regulatory Fee for Permit.**

- a. The City shall assess a regulatory fee on all fireworks sales that occur within the City of Huntington Beach. The regulatory fee based on the gross sales of fireworks shall be paid by the permittee. The purpose of the regulatory fee is to raise sufficient funds to pay for enforcing the provisions of this Chapter including extra personnel time for fire inspection and enforcement duties.
- b. Prior to imposing the fee the City shall prepare a study of the anticipated cost for fireworks education awareness and enforcement. After preparing the study the City Council shall adopt a Resolution setting the regulatory fee rate no later than the last meeting prior to the first day of fireworks sales pursuant to this Chapter. Effective March 2013, the regulatory fee shall not exceed ten (10) percent of the total gross sales of the fireworks sold in the City by permittees in the prior year.
- c. The Finance Department each year shall determine each permittees share of the regulatory fee based on the permittee's fireworks sales financial statements. Each permittee shall provide its fireworks sales financial statements to the City no later than August 31st of the same year. After the Finance Department receives the financial statements the Finance Department shall invoice each licensee for their share of the total annual regulatory fee. Payment of the regulatory fee by each licensee shall be due to the City thirty (30) days following issuance of the invoice. In addition to the City's standard collection procedures, failure by any licensee to pay the amount invoiced by the City's Finance Department shall be cause to disqualify the licensee from obtaining a license to sell fireworks in the City in the future.

**Section 5.90.130 Safe and Sane Fireworks – Temporary Fireworks Stand.**

- a. All retail sales of "Safe and Sane Fireworks" shall be permitted from within a temporary fireworks stand, and the retail sales from any other building or structure is hereby prohibited. Temporary stands shall be subject to NFPA 1124 Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, Current Edition and any other requirements as established by the City.
- b. The Fire Chief or his/her designee is authorized to promulgate reasonable additional rules and regulations for the operation of fireworks stands, in order to eliminate or reduce to a minimum the risk of fire or injury to persons or damage to property. A copy of any such rules and regulations shall be posted in a prominent place in each fireworks stand.



Failure to comply with said rules and regulations shall be grounds for the immediate revocation of any permit granted under this Chapter.

**Section 5.90.140 Safe and Sane Fireworks – Revocation of Permit.**

The Fire Chief or his/her designee, may revoke, immediately and without notice or hearing, the permit of any permittee who violates any section of this Chapter.

Any permittee whose permit has been revoked, shall be barred from receiving a permit under this Chapter for up to five (5) years from the date of revocation.

**Section 5.90.150 Safe and Sane Fireworks – Limitation on Places and Hours of Discharge.**

- a. It shall be unlawful for any person to ignite, discharge, project or otherwise fire or use, any "Safe and Sane Fireworks," or permit the ignition, discharge or projection thereof on any beaches, wetlands, public parks and/or within the downtown corridor, specifically:
  - i. Zones 1, 2 and 3 of the Downtown Specific Plan.
  - ii. All areas on the ocean side of Pacific Coast Highway.
- b. Subject to the exception noted above, it shall be unlawful for any person to ignite, discharge, project or otherwise fire or use, any "Safe and Sane Fireworks," or permit the ignition, discharge or projection thereof except on July 4th of each year between the hours of 12:00 noon and 10:00 p.m.
- c. It shall be unlawful for any person to ignite, discharge, project or otherwise fire or use, any "Safe and Sane Fireworks," or permit the ignition, discharge or projection thereof, upon or over or onto the property of another without his/her consent or to ignite, discharge, project or otherwise fire or make use of any "Safe and Sane Fireworks" within ten (10) feet of any residence, dwelling or other structure, or oil wells.
- d. It is unlawful for any person, firm or corporation to use or discharge any fireworks, including safe and sane fireworks as defined in Part 2 of Division 11 of the California Health and Safety Code, within the following areas of the City:
  - i. Any public property, including, but not limited to, public streets, highways, alleys, sidewalks, parks or other publicly owned property, buildings or facilities, except residential streets.
  - ii. Any property within a commercial district of the city as defined by the Huntington Beach Zoning and Subdivision Code except for any nonconforming residential use within such district used for residential purposes as of the effective date of the ordinance codified in this section;

- iii. Any property within an industrial/manufacturing district of the city as defined by the Huntington Beach Zoning and Subdivision Code except for any nonconforming residential use within such district used for residential purposes as of the effective date of the ordinance codified in this section.

#### **Section 5.90.160 Safe and Sane Fireworks – Supervision of Minors.**

It shall be unlawful for any person having the care, custody or control of a minor (under 18-years-old) to permit such minor to discharge, explode, fire or set off any "Dangerous Fireworks", at any time, or to permit such minor to discharge or set off any "Safe and Sane Fireworks" unless such minor does so under the direct supervision of a person over 18-years-of-age and during the hours and on the day permitted by this Chapter.

#### **Section 5.90.170 Seizure of Fireworks.**

The Fire Chief or his/her designee may seize, take, remove or cause to be removed, at the expense of the permittee or permit fireworks wholesaler, whichever is applicable, all stock of fireworks offered or exposed for sale, stored or held in violation of this Chapter when such violation creates an imminent threat to public health or safety.

#### **Section 5.90.180 Fireworks Wholesaler Public Education Plan.**

Each fireworks distributor/wholesaler who is supplying one or more of the nonprofit organization who is a permittee under this Chapter, shall annually submit a Public Education Plan to the Fire Department no later than 5:00 pm on June 1. Said Public Education Plan should outline the public safety and education efforts for that year that have been initiated, supported and/or delivered by each fireworks distributor/wholesaler within the City. Said public education plan should include, but is not limited to, samples of all the materials and the extent of distribution of all of the safety and education materials discussed in that wholesaler's/distributor's plan.

#### **Section 5.90.190 Concurrent Authorities.**

This Chapter is not the exclusive regulation for fireworks within the City of Huntington Beach. It shall supplement and be in addition to the other regulatory codes, statutes, regulations and ordinances heretofore and hereinafter enacted by the City of Huntington Beach, the State of California or any other legal entity or agency having jurisdiction.

If any section, subsection, sentence, clause or phrase of this Chapter that is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5.90.200 Expiration of Ordinance.**

This ordinance will expire July 5, 2013.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

  
Fire Chief